



Crl.A.No.625 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.625 of 2012

M/s.Sangeeta Traders

B-10/305, Mahadevan Apartments,

T.T.K. Road, Alwarpet,

Chennai – 600 018.

Represented by its Partner

Mr.Santhosh Kumar Lath

... Appellant/Complainant

Versus

1.M/s.AGK Packers,

Represented by its Partner

Kumar Rajan,

4D/2, SIPCOT Industrial Complex,

Trichy Road, Pudukkottai.

2.Kumar Rajan,

Partner,

M/s.AGK Packers,

4D/2, SIPCOT Industrial Complex,

Trichy Road, Pudukkottai.

... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order of dismissal for default dated 19.10.2011 passed in C.C.No.275 of 2009 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and restore the same.



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For Appellant : Mr.M.Aravind Subramaniam, Senior Counsel
for Mr.J.Venkatesa Perumal

For Respondents :

J U D G M E N T

This Court, on 06.10.2025, had passed the following order:

“The appellant as complainant filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondents in C.C.No.275 of 2009 before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai – 15. On receipt of summons, the respondents/accused appeared. Thereafter failed to appear and hence NBW issued. The complainant had taken process, NBW was issued to be executed through the Inspector of Police, Pudukkottai Police Station for several hearings starting from 05.04.2010, 11.06.2010, 06.09.2010, 10.11.2010, 06.12.2010, 14.10.2011. The NBW could not be executed since the respondent/accused was successfully evading. In the meanwhile, on 19.10.2011, the case was called, for that hearing alone the petitioner could not appear before the trial Court in time and also could not inform his counsel for getting delay. The trial Court on that day passed an order as follows:

“Complainant continuously absent. Notice affixed in Court hall. Complainant called absent. Office Assistant



examined as Court witness. As complainant is continuously absent and no representation was made on behalf of complainant, complaint is dismissed u/s.256(1) of Cr.P.C. ”

2.According to the appellant, the appellant had been showing diligence and he had been prosecuting the case, paying process fees, taking out NBW regularly. Even for the previous hearing date of the impugned order, i.e., on 14.10.2011 NBW was taken. But trial Court not given sufficient opportunity and finding that the case is pending at the stage of NBW ought to have adjourned the case but dismissed the same, against which, the appellant preferred the appeal. Initially, the appeal was filed before this Court, later transferred to the Sessions Court thereafter now it has been re-transferred to this Court. Hence, the case is kept pending from the year 2011 without any progress.

3.The learned counsel for the appellant submitted that the respondent is facing two other cases apart from this case and in that two cases he settled the amount. On instructions, the learned counsel submitted that the respondent has got all the means to pay, still he is residing at the same address and doing business.

4.In view of the above, this Court directs the appellant to take private notice to the respondents informing about the pendency of the above case.



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5.The learned Additional Public Prosecutor through the jurisdictional police, namely, the Inspector of Police, Pudukottai to inform the respondents, namely, M/s.AGK Packers, 4D/2, Sipcot Industrial Complex, Trichy Road, Pudukkottai and his Partner Kumar Rajan about the pendency of the above appeal before this Court and ensure his presence before this Court on the next hearing date without fail.

6.Post the case on 24.10.2025.”

2.In continuation and conjunction to the earlier order passed by this Court on 06.10.2025, the appellant had taken notice to the respondents/accused and the same was returned with an endorsement 'Left without Instruction' and Affidavit of Service dated 24.10.2025 filed confirming the same. The Inspector of Police, Thirukornam Police Station, Pudukkottai District had taken steps to serve the notice to the respondents and it was found that respondent company is not functioning in Plot No.4D/2, Sipcot Industrial Complex, Trichy Road, Pudukkottai from 17.03.2023. One M/s.Smart Asia Cartons is functioning in the said Plot.



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3.Steps have been taken to ascertain the whereabouts of the respondents but unable to be traced. Hence, it would be construed as deemed service of notice.

4.It is seen that the complaint is dismissed for default and not on merits. In view of the same, this Court set asides the dismissal order dated 19.10.2011 passed in C.C.No.275 of 2009 and directs the trial Court to take the complaint on file, proceed with the trial and dispose of the case on merits and in accordance with law. Since the case is of the year 2009, the trial Court to give priority for early disposal of the case.

5.Accordingly, the Criminal Appeal is allowed.

29.10.2025

Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

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M.NIRMAL KUMAR, J.

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To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

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